

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL A. CARTER and MEREDITH CARTER,

Index No.: 09-cv4328(DLC)

Plaintiffs,

-against-

VERIFIED ANSWER OF DAMO
CONSTRUCTION CO., INC
TO FOURTH-PARTY COMPLAINT
WITH CROSS CLAIMS AND
COUNTERCLAIMS.

36 HUDSON ASSOCIATES, LLC, JOSEPH PELL LOMBARDI &
ASSOCIATES ARCHITECTS, JOSEPH PELL LOMBARDI, TRIBECA 22
INVESTMENT LTD, SERVET HARUNOGLU, ONURHAN HOMRIS, ADG
ARCHITECTURE & DESIGN, P.C.

Defendants.

36 HUDSON ASSOCIATES, LLC,

Third-Party Index No. 590965/09

Third-Party Plaintiffs,

-against-

FBR CONSTRUCTION GROUP LLC and JAY
FURMAN,

Third-Party Defendants.

FBR CONSTRUCTION GROUP LLC and JAY
FURMAN,

Fourth-Party Defendant
DAMO CONSTRUCTION CO., INC
demands a jury trial.

-against-

L'ABBAYE REAL ESTATE, LLC, DAMO
CONSTRUCTION CO. INC. and ZR CONTINENTAL CORP.

Fourth-Party Defendants.

Fourth-Party Defendants DAMO CONSTRUCTION CO. INC., by their attorneys PAPADOPOULOS-VLANTES & MOEHRING, LLC., as and for their Verified Answer to the Fourth-Party Complaint, allege upon information and belief:

AS TO THE PARTIES

1. Deny knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph "1".

2. Deny knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph "2".

3. Deny knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph "3".

4. Admit the allegations contained in paragraph "4".

5. Deny knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph "5".

JURISDICTION

6. Deny knowledge or information sufficient to form a

belief as to each and every allegation contained in paragraph "6".

AS TO THE FACTS COMMON TO ALL CAUSES OF ACTION

7. Deny knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph "7".

8. Deny knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph "8".

9. Deny knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph "9".

10. Deny knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph "10".

11. Deny knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph "11".

12. Deny knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph "12".

AS TO THE FIRST CLAIM OF RELIEF

13. DAMO CONSTRUCTION, CO. INC., answering Fourth-Party Defendant, repeats, reiterates and realleges each and every response as previously set forth in paragraph "1" through "12" in response to paragraph "13" of the Verified Fourth-Party Complaint with the same force and effect as if fully set forth at length herein.

14. Deny knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph "14", as Fourth-Party Defendant, DAMO CONSTRUCTION, CO. INC., is not mentioned in paragraph "14" of the Complaint brought forward by Fourth-Party Plaintiff.

15. Deny knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph "15", as Fourth-Party Defendant, DAMO CONSTRUCTION, CO. INC., is not mentioned in paragraph "15" of the Complaint brought forward by Fourth-Party Plaintiff.

16. Deny knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph

"16", as Fourth-Party Defendant, DAMO CONSTRUCTION CO. INC. is not mentioned in paragraph "16" of the Complaint brought forward by Fourth-Party Plaintiff.

17. Deny knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph "17", as Fourth-Party Defendant, DAMO CONSTRUCTION CO. INC. is not mentioned in paragraph "17" of the Complaint brought forward by Fourth-Party Plaintiff.

AS TO THE SECOND CLAIM FOR RELIEF

18. DAMO CONSTRUCTION CO. INC., answering Fourth-Party Defendant, repeats, reiterates and realleges each and every response as previously set forth in paragraph "1" through "17" in response to paragraph "18" of the Verified Fourth-Party Complaint with the same force and effect as if fully set forth at length herein.

19. Deny each and every allegation contained in paragraph "19" as to Defendant DAMO CONSTRUCTION CO. INC. and deny knowledge or information sufficient to form a belief as to the remainder of the allegations.

20. Deny each and every allegation contained in paragraph "20" as to Defendant DAMO CONSTRUCTION CO. INC. and deny knowledge or information sufficient to form a belief as to the remainder of the allegations.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

21. The Fourth-Party Complaint fails to state a claim upon which relief may be granted as against DAMO CONSTRUCTION CO. INC.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

22. Some or all of the allegations in the Fourth-Party Complaint as against Fourth-Party Defendant DAMO CONSTRUCTION CO., INC. are barred by the applicable statute(s) of limitations.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

23. Some or all of the allegations in the Fourth-Party Complaint as against Fourth-Party Defendant DAMO CONSTRUCTION CO. INC. are barred by the doctrine of latches, estoppels, release, waiver, ratification and/or unclean hands.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

24. Fourth-Party Defendant DAMO CONSTRUCTION CO. INC. cannot be found liable for some or all of the allegations in the Fourth-Party Complaint because DAMO CONSTRUCTION CO. INC. had no duty to FBR CONSTRUCTION GROUP LLC and JAY FURMAN or any other party mentioned therein.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

25. Fourth-Party Defendant DAMO CONSTRUCTION CO. INC. cannot be found liable, as Fourth-Party Defendant DAMO CONSTRUCTION CO. INC. breached no duty, because he acted reasonably under the circumstances and complied with all applicable statutes, codes, rules, regulations, industry standards and standards of care.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

26. Fourth-Party Defendant DAMO CONSTRUCTION CO. INC. cannot be found liable, for some or all of the allegations in the Fourth-Party Complaint, as they had no duty, right, obligation, and/or authorization to supervise, inspect, direct and/or control the work at issue.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

27. Fourth-Party Defendant DAMO CONSTRUCTION CO. INC. cannot be found liable for some or all of the allegations in the Fourth-Party Complaint, as Fourth-Party Defendant DAMO CONSTRUCTION CO. INC. had no duty, right, obligation and/or authorization to supervise, inspect, occupy, possess and/or control the location at issue.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

28. Fourth-Party Defendant DAMO CONSTRUCTION CO. INC. cannot be found liable, as Fourth-Party Defendant DAMO CONSTRUCTION CO. INC. did not proximately cause any of the damages alleged by FBR CONSTRUCTION GROUP LLC and JAY FURMAN or any other party for which DAMO CONSTRUCTION CO. INC. can be held liable.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

29. DAMO CONSRUCTION CO. INC. cannot be found liable to the extend that FBR CONSTRUCTION GROUP LLC and JAY FURMAN or any other party mentioned therein or other parties caused or

contributed to the damages alleged, and/or to the extent that FBR CONSTRUCTION GROUP LLC and JAY FURMAN or any other party mentioned therein or other parties failed to exercise reasonable and ordinary care under the circumstances.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

30. DAMO CONSTRUCTION CO. INC. cannot be found liable for the allegations in the Fourth-Party Complaint to the extent of lack of privity.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

31. DAMO CONSTRUCTION CO. INC. cannot be found liable for the allegations in the Fourth-Party Complaint as DAMO CONSTRUCTION CO. INC. was not engaged in any scope of work that caused the alleged damages.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

32. DAMO CONSTRUCTION CO. INC. cannot be found liable for the allegations in the Fourth-Party Complaint as to the extent that FBR CONSTRUCTION GROUP LLC and JAY FURMAN, or another party mentioned therein, lacks standing to bring any of the claims as alleged against DAMO CONSTRUCTION CO., INC.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

33. DAMO CONSTRUCTION CO.INC. cannot be held liable to the extent that the damages alleged in the Fourth-Party Complaint were caused by any pre-existing or other site conditions unrelated to the alleged wrongful or neglectful acts or omissions of DAMO CONSTRUCTION CO.INC. which this Fourth-Party Defendant specifically denies.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

34. DAMO CONSTRUCTION CO.INC. cannot be found liable for the allegations in the Fourth-Party Complaint to the extent that there was a failure to mitigate the damages alleged.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

35. DAMO CONSTRUCTION CO.INC. adopt and incorporate any and all other defenses which have been or will be asserted by any and all other parties to this action as if set forth fully herein, and/or any other defenses which become known during the discovery phase of this action.

AS AND FOR A REPLY TO ALL CROSS-CLAIMS

36. DAMO CONSTRUCTION CO.INC. denies the truth of each

and every allegation contained in the cross-claims of all co-Fourth-Party Defendants, and any and all other parties.

AS AND FOR A CROSS-CLAIM AGAINST FOURTH-PARTY CO-DEFENDANTS L'ABBAYE REAL ESTATE and ZR CONTINENTAL CORP.

37. Upon information and belief, that if and in the event Plaintiff sustained the injuries and damages complained of, such injuries and damages were caused in whole or in part by reason of the wrongful conduct of the Plaintiffs FBR CONSTRUCTION GROUP LLC and JAY FURMAN and/or Fourth-Party co-Defendants, L'ABBAYE REAL ESTATE and ZR CONTINENTAL CORP., there being no active or primary wrongdoing on the part of the answering Fourth-Party Defendant DAMO CONSTRUCTION CO. INC. contributing thereto.

38. By reason of the foregoing, the answering Fourth-Party Defendant is entitled to full indemnity and/or contribution from, and to judgment over and against the Fourth-Party co-Defendants, L'ABBAYE REAL ESTATE, LLC and ZR CONTINENTAL CORP., for all or part of any verdict or judgment which Plaintiff may recover against answering Fourth-Party Defendants.

**AS AND FOR A COUNTERCLAIM AGAINST FOURTH-PARTY
PLAINTIFFS FBR CONSTRUCTION GROUP LLC AND JAY
FURMAN**

39. If Plaintiff's sustained injuries or damages as alleged in the complaint by reason other than their own or damages were sustained by reason of the carelessness, recklessness and negligence of Fourth-Party Plaintiffs FBR CONSTRUCTION GROUP LLC and JAY FURMAN, then by reason of the foregoing, if the Fourth-Party Plaintiffs herein recover against the answering Fourth-Party Defendants, then the answering Fourth-Party Defendant DAMO CONSTRUCTION CO. INC. will be entitled to contribution and/or indemnification from the Fourth-Party Plaintiffs, FBR CONSTRUCTION GROUP LLC and JAY FURMAN, and will be entitled to recover the amount of any judgment from the Fourth-Party Plaintiffs, FBR CONSTRUCTION GROUP LLC and JAY FURMAN, for their proportionate share commensurate with the respective degrees of negligence of any judgment which might be awarded to the Plaintiff.

AS AND FOR COUNTERCLAIM AGAINST PLAINTIFFS
36 HUDSON ASSOCIATES LLC, JOSEPH PELL LOMBARDI &
ASSOCIATES, ARCHITECTS, JOSEPH PELL LOMBARDI, TRIBECA 22
INVESTMENT LTD, SERVET HARUNOGLU, ONURHAN HOMRIS. ADG
ARCHITECTURE & DESIGN, P.C.

40. If Plaintiff sustained injuries or damages as alleged in the complaint by reason other than his or her own carelessness, recklessness or negligence, then such injuries or damages were sustained by reason of the carelessness, recklessness and negligence of Plaintiffs 36 HUDSON ASSOCIATES LLC, JOSEPH PELL LOMBARDI & ASSOCIATES, ARCHITECTS, JOSEPH PELL LOMBARDI, TRIBECA 22 INVESTMENT LTD, SERVET HARUNOGLU, ONURHAN HOMRIS, ADG ARCHITECTURE & DESIGN, P.C., then by reason of the foregoing, if the Plaintiffs herein move, then the answering Fourth-Party Defendant DAMO CONSTRUCTION, CO., LLC will be entitled to contribution and/or indemnification from said Plaintiffs and will be entitled to recover the amount of any judgment from said Plaintiffs for his proportionate share commensurate with the respective degrees of negligence of any judgment which might be awarded to the Plaintiffs.

WHEREFORE, answering Fourth-Party Defendant

DAMO CONSTRUCTION CO. INC. by and through their attorneys
PAPADOPOULOS-VLANTES & MOEHRING, LLC, respectfully demand
judgment dismissing the Fourth-Party Complaint together with the
costs and disbursements of this action or, in the alternative,
in the event that the Plaintiff recovers any verdict and/or
judgment against the answering Fourth-Party defendants, the
answering Fourth-Party Defendant DAMO CONSTRUCTION, CO. INC.
demands judgment over and against the Plaintiffs 36 HUDSON
ASSOCIATES LLC, JOSEPH PELL LOMBARDI & ASSOCIATES, ARCHITECTS,
JOSEPH PELL LOMBARDI, TRIBECA 22 INVESTMENT LTD., SERVET
HARUNOGLU, ONURHAN HOMRIS, ADG ARCHITECTURE & DESIGN, P.C.
and/or Fourth-Party co-Defendants, L'ABBAYE REAL ESTATE and ZR
CONTINENTAL CORP., and the Fourth-Party Plaintiffs, FBR
CONSTRUCTION GROUP LLC and JAY FURMAN, over the Defendants in
whole or in part, in accordance with the Cross-claim and
counterclaims herein above set forth, together with the costs,
disbursements and counsel fees incurred in the defense of this
action; and for such other and further relief as to this
Honorable Court may deem just, proper and equitable.

Dated: Bronx, New York
September 20, 2010

Yours,

Papadopoulos-Vlantes & Moehring, LLC

By: _____
AGLAIA PAPADOPOULOS-VLANTES, ESQ.
Attorneys for Fourth-Party Defendants
DAMO CONSTRUCTION
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Bronx, New York 10451
718-728-6100

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